



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-00105

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

01/12/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems began with the breakup of his marriage in 2009 and were exacerbated by a significant pay cut in 2013. Unable to make significant progress in paying his debts until recently, Applicant nonetheless acted responsibly under the circumstances. He has resolved most of his debts and his financial condition is stable. Applicant's request for a security clearance is granted.

Statement of the Case

On May 3, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On August 24, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer), which included 11 enclosed documents, and requested a hearing. The case was assigned to an administrative judge on January 8, 2016, but later was transferred to me on June 6, 2016, and I convened a hearing on August 8, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A - Z.⁴ I left the record open after the hearing to receive additional relevant information. The record closed on August 17, 2016, when I received Applicant's post-hearing submissions. They are included in the record as Ax. AA – MM.⁵ All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on August 16, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had ten delinquent or past-due debts totaling \$37,735 (SOR 1.a - 1.j). In response, Applicant denied SOR 1.a, 1.h, and 1.j. He admitted the remaining SOR allegations. In addition to the facts thus established, I make the following findings of fact.

Applicant is 60 years old and has worked in the defense industry since he retired from the Navy in March 1995 after 20 years of honorable service. Applicant has held military and industrial security clearances since 1975. (Gx. 1; Tr. 21 - 22, 44)

Applicant has been married three times. His most recent marriage produced one child, now an adult, and ended by divorce in 2011. Applicant's financial problems began in 2009 when his third wife emptied their checking account. He was unable to pay their regular household expenses in the short term and could not stay current with their regular financial obligations for several years.

As a result of their divorce, Applicant was ordered to pay his ex-wife \$2,650 each month. She also was awarded 40 percent of his monthly Navy retired pay. Applicant also paid in excess of \$6,000 in legal fees to finalize the divorce, the decree of which included a division of marital-debt responsibilities. Of the debts alleged in the SOR, Applicant's ex-wife was required to pay SOR 1.h but never did. Additionally, the delinquent debt at SOR 1.j was for an account opened by his ex-wife after they separated. Both debts have been resolved through Applicant's negotiations with those creditors. Applicant's ex-wife died in March 2016, thus ending Applicant's support obligations and restoring his full military retired pay. (Answer; Gx. 1; Ax. A - F; Tr. 24 - 25, 41 - 42, 63 - 65)

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ Included as Hearing Exhibit (Hx.) 1 is a list identifying those exhibits as Applicant's EQIP and three credit reports.

⁴ Ax. A - K were previously submitted as enclosures to Applicant's Answer.

⁵ Applicant originally labeled his post-hearing submissions as Ax. Y - KK. I have re-labeled those exhibits to conform to the record, which already included Ax. Y and Z.

In July 2013, Applicant negotiated a reduction in the court-ordered monthly support payment to his ex-wife to \$1,828. However, in October 2013, Applicant's employer presented him with a choice between being laid off as part of a reduction in force or taking a 30 percent pay cut. He chose the latter, which further limited his ability to resolve his past-due debts. Nonetheless, Applicant pursued resolution of the debts assigned to his ex-wife when he became aware they had not been paid. He also contacted his other creditors and was able to settle or otherwise resolve the debts alleged at SOR 1.a, 1.c, 1.e and 1.f. (Answer; Ax. A - K, CC - GG; Tr. 25, 41)

In early 2014, Applicant's mother required assistive care because she suffered from Alzheimer's disease. Applicant and his siblings shared the costs of their mother's care because their mother did not have sufficient medical insurance. His mother died in October 2015, ending Applicant's financial obligations to her or her estate. (Answer; Ax. AA, II - LL; Tr. 34 - 35, 57 - 59)

Most of the money used to resolve his debts was loaned to Applicant by a friend. He is repaying the loan through \$500 monthly payments. Applicant had previously sought professional financial counseling that produced a debt-management plan (DMP) that would have repaid his debts through 40 monthly \$861 payments. Applicant opted instead for the lower payments and faster debt resolution through a personal loan. (Answer; Ax. X; Ax. MM; Tr. 36 - 41, 60 - 63)

When Applicant met with a financial counselor in January 2016 to establish the DMP, it was projected that he would have about \$300 remaining each month after paying all of his regular monthly obligations, including his court-ordered spousal support and an \$861 DMP payment. Since his ex-wife's death in March 2016, Applicant's available monthly income has increased by more than \$2,000, and he has not incurred any new delinquent or past-due debts. He also is paying about \$300 less each month as part of his debt resolution efforts.

Applicant has a good reputation in the workplace. Co-workers and supervisors alike hold him in high regard for his professionalism, honesty, trustworthiness, and reliability. (Ax. L)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

⁶ See Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁹

Analysis

Financial Considerations

The Government established its case through sufficient and reliable information that supports the SOR allegations under this guideline. The facts established by this record reasonably raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, this record requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), available information reflects an inability, not an unwillingness, to pay his debts. The record also supports application of the following pertinent AG ¶ 20 mitigating conditions:

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant's financial problems were caused by his ex-wife's financial malfeasance in April 2009. Thereafter, a combination of the costs of his divorce, a significant spousal support obligation, the costs of his mother's end-of-life care, and a 2013 pay cut exacerbated his financial problems. Applicant responded to those events and circumstances responsibly by petitioning the court for a reduction in his spousal support obligation. He also tried with mixed success to negotiate settlements with his creditors. Finally, he recently has been able to actually resolve most of the debts listed in the SOR and his personal finances again appear to be sound. On balance, I conclude the foregoing is sufficient to mitigate the security concerns about Applicant's finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant retired after a 20-year career in the Navy and has held a security clearance in a variety of contexts for most of the past 40 years. His financial problems arose from circumstances beyond his control, and he has acted responsibly in dealing with those problems. Applicant's good reputation for trustworthiness and reliability supports a conclusion that he is not likely to experience additional financial problems. A fair and commonsense assessment of the record as a whole shows the security concerns raised by the Government's information are mitigated.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a - 1.j: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge